No. 354

In the Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL HOUSING ADMINISTRATION, REGION NO. 4, STATE DIRECTOR RAYMOND FOLEY, PETITIONER

v.

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR THE PETITIONER

INDEX

198893—39——1

CITATIONS

Cases: Page

Cases—Continued. Page

United States Statutes:

Miscellaneous—Continued. Page

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OPINIONS BELOW

The opinion of the Circuit Court of Wayne County, Michigan (R. 10–11), is not reported. The opinion of the Supreme Court of Michigan (R. 12–15) is reported in 289 Mich. 91 and in 286 N. W. 169.

JURISDICTION

The judgment of the Supreme Court of Michigan was entered on June 5, 1939 (R. 15). The petition for a writ of certiorari was filed on September 2, 1939, and was granted on October 23, 1939. The jurisdiction of this Court rests on Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

The petition for certiorari invoked the jurisdiction of this Court on the ground that the decision below denied an immunity claimed by the petitioner under the Constitution and under the National Housing Act, as amended, c. 847, 48 Stat. 1246, c. 614, 49 Stat. 684, 722, Sec. 344 (a), and relied on *Federal Land Bank* v. *Priddy*, 295 U. S. 229, to sustain the jurisdiction of this Court.

Federal question was raised by paragraph Third of petitioner's answer and disclosure in the trial court (R. 6) and also in the statement of reasons and grounds of appeal to the Supreme Court of Michigan (R. 4).

QUESTION PRESENTED

Whether the Federal Housing Administration, through its State Director, is subject to garnishment for moneys due to an employee.[1]

STATUTE INVOLVED

Section 1 of the National Housing Act, approved June 27, 1934, c. 847, 48 Stat. 1246, as amended by the Act of August 23, 1935, c. 614, 49 Stat. 684, 722, Sec. 344 (a) (12 U. S. C. Supp. IV 1702), provides:

> * * * The Administrator shall, in carrying out the provisions of this title [title I] and titles II and III, be authorized, in his official capacity,

[1] This is the statement of the question as set forth in the petition for certiorari. The record does not show the nature of the obligation garnished, whether for wages or otherwise, and the court below treated the question as not dependent on "whether or not the money represented wages due Brooks" (R. 12). Hence there is presented the broad question whether the Administration is subject to garnishment for moneys owing generally, not merely for wages.

to sue and be sued in any court of competent jurisdiction, State or Federal.

Section 1 of the National Housing Act as originally enacted, and the statute amending that section are set forth in the Appendix, *infra*, pp. 54–55.[2]

STATEMENT

On November 5, 1930, the respondent obtained a final judgment against one Heffner and a George Brooks, doing business as Heffner and Brooks (R. 4) in the Circuit Court of Wayne County, Michigan, in the sum of $102.63 (R. 3). Thereafter, on March 5, 1938, the petitioner was served with a writ of garnishment issued by that court (R. 4). Petitioner appeared in the cause (R. 6) and filed an answer and disclosure alleging that Brooks was "no longer connected with the Federal Housing Administration" due to his death after service of the writ, and admitting that there was due and owing to Brooks by the Federal Housing Administration at the time of his death the sum of $71.11 which remained unpaid[3] (R. 6). The answer further asserted: "That

[2] The National Housing Act (Act of June 27, 1934, c. 847, 48 Stat. 1246) has been amended eight times: Act of May 28, 1935, c. 150, 49 Stat. 293, secs. 22–31; Act of August 23, 1935, c. 614, 49 Stat. 722, sec. 344; Act of April 3, 1936, c. 465, 49 Stat. 1187; Act of April 17, 1936, c. 234, 49 Stat. 1233, secs. 3 and 4; Joint Resolution of February 19, 1937, c. 12, 50 Stat. 20; Act of April 22, 1937, c. 121, 50 Stat. 70; Act of February 3, 1938, c. 13; 52 Stat. 8; Act of June 3, 1939, Public No. 111, 76th Congress. Section 1 of the National Housing Act, here involved, has been amended but once. Act of August 23, 1935, c. 614, 49 Stat. 722, sec. 344 (a).

[3] The record is barren of a showing of how Brooks had been "connected" with the Administration, and of the nature of the obligation due him. However, the Brief of Appellant below,

the Federal Housing Administration is an agency of the United States Government and is, therefore, not subject to garnishee proceedings" (R. 6).

Respondent moved for judgment against the garnishee defendant, "Federal Housing Administration, Region #4, State Director, Raymond Foley" (R. 7) which motion was granted on the ground that the Federal Housing Administration is not "in any wise a part of the Federal Government" (R. 11) and that "the nature of its business is that of an insurer of loans" (R. 10). Judgment was entered in favor of respondent, not only granting recovery against petitioner but allowing respondent execution therefor (R. 11).

Petitioner appealed to the Supreme Court of Michigan, asserting in the statement of reasons and grounds of appeal: "That the Federal Housing Administration is an executive branch of the United States Government, which is a sovereign body politic, and can not be sued without its consent, and is not within the jurisdiction

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petitioner here, recites in the Statement of Facts (pp. 2-3): "At the time of service of the writ of garnishment, the principal defendant, George Brooks, was an employee of the United States, and received his pay from time to time from the Treasury Department of the United States, and worked directly under the Federal Housing Administration, which is an agency of the United States Government." And the Brief of Plaintiff-Appellee below, respondent here, under the caption Statement of Facts recites (p. 1): "Appellee herein accepts the statement of facts set forth in appellant's brief." The court below considered the question in its broad sense: "Is the Federal Housing Administration, a governmental agency, subject to being sued as garnishee defendant through its State Director?" (R. 12), adding: "No question is raised in this appeal as to whether or not the entire sum was garnishable, whether or not the money represented wages due Brooks, or the effect of his death" (R. 12).

of this court" (R. 4). The Supreme Court of Michigan affirmed the judgment of the Circuit Court (R. 15), adding costs against the petitioner and allowing execution therefor. It held that immunity had been waived by the "sue-and-be-sued" clause of Section 1 of the National Housing Act, as amended (R. 12–15). Without resting its decision on that ground, the court below also indicated agreement with the view of the trial court that the Federal Housing Administration was not engaged in a governmental function (R. 14). The court below later stayed proceedings for enforcement of the judgment pending its further order (R. 16).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Michigan erred:

1. In holding that the Federal Housing Administration is subject to garnishment proceedings.

2. In holding that the "sue-and-be-sued" clause of Section 1 of the National Housing Act, as amended, makes the Federal Housing Administration subject to garnishment proceedings.

3. In failing to hold that the "sue-and-be-sued" clause of the Act was limited solely to suits arising out of the carrying out of the provisions of Titles I, II, and III of the Act.

4. In affirming the judgment of the Circuit Court for the County of Wayne, Michigan.

5. In allowing execution.[4]

[4] This fifth error was not explicitly specified in the specification of errors to be urged set forth in the petition for certiorari, but in the Reasons for Granting the Writ, the petition, in illustrating the burdens of garnishment, pointed to executions as such a burden (Petition, p. 8).

SUMMARY OF ARGUMENT

I

Section 1 of the National Housing Act, as amended, relied on by the court below as a waiver of immunity, authorizes "The Administrator" to be sued, not the Administration, or regional administrations or state directors. The State Director and not the Administrator was served. The Administration, and not the Administrator, was named as defendant, appeared and answered. Judgment was entered against the Administration. If there is power to do so, the Administrator waives for this case the misnomer of the defendant and the defective service, but in any event, the judgment should, if affirmed, be reformed so as to run against the Administrator in his official capacity rather than against the Administration.

II

A. It has long been settled that no garnishment by a creditor of an obligee of the Government is maintainable against the United States, its officer, or funds. *Buchanan* v. *Alexander*, 4 How. 20; *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, [illegible] F. (2d) [illegible] (App. D. C.), certiorari denied, [illegible] U. S. [illegible]. This rule is derived from the immunity from suit of the United States, an immunity relaxed by Congress by authorizing the Administrator in carrying out certain parts of the National Housing Act to be sued. Whether the relaxation extends to garnishment depends on the statutory language and the implications of all relevant circumstances and considerations. *Federal*

Land Bank v. *Priddy*, 295 U. S. 229, 231–232; *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 389. Here explicit consent to garnishment is absent, the statutory language tends to preclude garnishment by strangers to Administration transactions, and numerous considerations argue against implying consent.

B. The immunity asserted is for the benefit of the Government itself, and is against strangers to its transactions. The trend of the times to relax the strictness of various immunities formerly thought implied by sovereignty and our federated system (E. g., *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381; *James* v. *Dravo Contracting Co.*, 302 U. S. 134; *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466) leaves unimpaired the sharp distinction between according immunities to private persons who chance to deal with the Government and immunities inhering in the Government itself and its instrumentalities. Cf. *Clallam County* v. *United States*, 263 U. S. 341; *Pittman* v. *Home Owners' Loan Corporation*, No. 10, this Term, decided November 6, 1939. Decisions relaxing governmental immunity from suit (*Federal Land Bank* v. *Priddy*, 295 U. S. 229; *Keifer & Keifer* v. *R. F. C.*, *supra*) have been confined to suits growing out of transactions with the Government or its instrumentality. "Legal irresponsibility" disfavored by "dominant contemporary opinion," a disfavor made effective in the *Keifer* case, cannot result from freedom from garnishment by strangers. Freedom from garnishment involves no escape from legal obligations. While no reasons are advanced why federal obligees, so far as they alone are concerned, should be exempt from

normal remedies of their creditors, it is not controlling that as a consequence of protecting the Government benefit may flow to those obligees.

C. Considerations of policy show the need for protecting the Administrator from garnishment. The burden of the garnishment process would be directly on the Government. Past experience even under the settled law shows the degree to which garnishment may disrupt the normal functions of government. Procedural burdens, fact ascertainment, preparation and presentation of proof, accounting burdens, opening the Government's books to plaintiffs and the burden of numerous and protracted suits would combine to impede efficient conduct of the Government's business.

That garnishment is an unwarranted burden on public bodies is indicated in the experience of the states. Many states bar garnishments against public bodies either by judicial decision or by legislation. Many permit it by statute but with limitations and restrictions beyond those applicable to garnishments against private persons.

Factual data likewise show the burden of garnishment on public bodies. Garnishments relating to public employees tend sharply to outnumber those relating to private employees. Studies disclose that the claims incident to wage executions against large private concerns are many, and the clerical attention consumed large. Defensive measures attempted by large private employers, such as discharge of employees chronically garnished, show the burden. Such self-help, whatever its morality, is not so readily available to the Government,

and it would be severely disadvantaged as a practical matter.

If suability includes all civil process as held below, a multiplicity of related remedies will be available in many states both before and after judgment in the principal action, to reach obligations other than wages, and whether or not the principal action is contractual.

A statutory scheme is virtually indispensable if public agencies are to be subject to garnishment; hence abrogation of their immunity by judicial decision is highly undesirable. Various state statutory schemes for restricting garnishment differently in the case of public bodies than in the case of private garnishees show the need for systematic statutory regulation rather than judicial abrogation of the immunity, if abrogation is desirable. Selecting the precise scheme involves innumerable considerations, which can feasibly be adjusted only by statute.

The general policy of the federal Government is not to account to strangers. The policy is found in the statute relating to assignment of claims against the United States. Where Congress has lifted the restrictions, regulatory conditions have been imposed to protect the Government.

D. Garnishment against the Federal Housing Administration, an ordinary part of the Government, is garnishment of the United States. Any doubt whether the Administration's functions are governmental was set at rest by *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477.

Notwithstanding the provisions exempting the Administrator from laws relating to government

employment and expenditures, the Administration functions in fact as an ordinary part of the government without fiscal independence. Its funds are public money made available in accordance with regular governmental appropriation, requisition, and disbursement procedure. Disbursements and expenditures are made by the Chief Disbursing Officer of the Treasury. The Administration's fiscal transactions are subject to supervision of the Comptroller General, and budget matters to that of the Director of the Budget and Congress. The Administrator is in important respects subject to the supervision of the Secretary of the Treasury.

Except for the claimed waiver of immunty, this garnishment does not differ from garnishment of salary owing an employee of a regular Government department. Any authorized suit against the Administrator is in fact against the United States with its consent. Cf. *Banco Mexicano* v. *Deutsche Bank*, 263 U. S. 591, 602–603; *Becker Steel Co.* v. *Cummings*, 296 U. S. 74, 78; *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 118. That the United States, for convenience, has appointed an agent to be sued makes no difference. *Cummings* v. *Societe Suisse*, 85 F. (2d) 287, 289 (App. D. C.) (reaffirmed, 99 F. (2d) 387, certiorari denied, 306 U. S. 631).

E. It is immaterial whether the Administration, or Administrator, is a corporation; any corporate status would furnish nothing beyond suability as permitted and limited by the express authority to be sued. The intimation that the Administrator may be a corporation (*Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 390–391 footnote; *United States* v. *Maxen*, 307 U. S. 200,

203) is based on the authority to sue and be sued, hence it would beg the question to conclude from corporate status consent to be garnished. Corporate status is further immaterial since the Administration functions as a regular part of the Government without fiscal independence.

The question whether the Administrator has the status of a corporation has been reserved. *United States* v. *Marxen, supra.* If material here, it would be difficult to find corporate status. Language customarily employed in creating corporations and provision for usual corporate incidents, are lacking. By contrast, the same Act in clear and certain terms provided for the creation of other corporations.

F. The authority of the Administrator to be sued is expressly limited by the phrase "in carrying out the provisions of this title and Titles II and III," indicating a purpose to exclude cases based on claims against third persons unrelated to the Administrator's own duties and liabilities.

Traditionally, liability of the Government to suit is not enlarged beyond what the statutory language requires. The recent and less strict view, in the *Keifer* case, met an asserted immunity amounting to "legal irresponsibility," not involved in immunity from garnishment by a stranger. While Congress has generously conferred on its agencies explicit authority to be sued, it has jealously confined explicit authority to be garnished.

Suability has been held not to imply garnishability, both by the federal courts (*McCarthy* v. *United States*

Shipping Board Merchant Fleet Corporation, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547) and by the prevailing opinion of state courts. The statute here involved was enacted against the background of those decisions.

Suability does not imply liability to attachment and execution to satisfy an authorized judgment based even on a direct claim without further indicia of Congressional intent. Cf. *Federal Land Bank* v. *Priddy*, 295 U. S. 229. Indicia of such intent present in the *Priddy* case are here missing. Even more need be shown to support garnishment by a stranger. Moreover, the Court in the *Priddy* case expressly reserved the question of the effect of a showing of interference with federal functions, a showing absent there and present here.

If the Administrator is garnishable merely because suable, as held below, by like reasoning the United States would be garnishable where the garnished claim could be the subject of suit against the United States under the Tucker Act.

III

The judgments below, *in personam*, improperly allow execution. The applicable state statute allows execution to issue against the garnishee, "his own goods and estate." Interference of such executions with normal functions of the Administration is shown by the experience in *United States* v. *Winkle Terra Cotta, Inc.* (No. 11547 pending on appeal C. C. A. 8th). Enforcement of such executions would permit satisfaction of garnishment judgments out of money, or property ac-

quired with money, appropriated for other purposes. There is no indication of Congressional intention to subject Federal Housing Administration property to execution.

ARGUMENT

I

THE ADMINISTRATOR, IF EMPOWERED TO DO SO, WAIVES THE DEFECTIVE SERVICE AND MISNOMER OF DEFENDANT, BUT THERE IS SOME DOUBT AS TO HIS POWER

Section 1 of the National Housing Act, as amended, quoted, *supra*, pp. 2–3, authorizes "The Administrator" to be sued, and not the Administration, or regional administrations, or state directors. In this case the State Director and not the Federal Housing Administrator was served, and the Administration, and not the Administrator, was named as defendant.[5] However, appearance was entered on March 7, 1938, by the United States Attorney "for Federal Housing Administration, Region #4, State Director Raymond Foley, Garnishee Defendant" (R. 6) and the answer and disclosure was that of "Federal Housing Administration by Raymond M. Foley, State Director" (R. 6). No objection was made by the Government on the ground that petitioner was made garnishee defendant rather than the Administrator, and it treated the proceedings throughout as

[5] At the time this suit was begun the state directors had no authority to accept service for the Administrator. By circular of May 16, 1938, the Administrator through his general counsel authorized state and district directors to "accept service of papers" where the Administrator was named as garnishee. The relevant portion of the circular is included in the Appendix, *infra*, pp. 71–72. Here, as has been pointed out, the Administration, not the Administrator, was named.

against the Federal Housing Administration. (See petition for certiorari, page 4, note 1.) The opinion below treats the proceeding as against the Administration. Judgment was entered simply "against the said garnishee defendant" (R. 11) which refers presumably to the named party, "Federal Housing Administration, Region #4, State Director, Raymond Foley," particularly in light of the respondent's motion for judgment (R. 7).

While the Government is anxious for a decision whether the Administrator is subject to garnishment, and accordingly does not desire to press the objection in this case, it is open to question whether the appearance of the United States Attorney for the Federal Housing Administration, or his failure to object that suit could be maintained only against the Administrator, or the Government's present willingness not to press the objection can operate to waive what may be held to be a jurisdictional defect,[*] or whether under the circumstances the defect can be deemed a mere misnomer of parties. Even the Attorney General is without power to waive the exemption of the United States from suit. Cf. *Minnesota* v. *United States*, 305 U. S. 382, 388–389; *Stanley* v. *Schwalby*, 162 U. S. 255, 269–270. Similarly a United States Attorney has "no power to waive conditions or limitations imposed by statute in respect of suits against the United States."

[*] The phraseology of the "question presented" in the petition for certiorari, which is the same as in this brief (*supra*, p. 2), is probably sufficiently broad to embrace this question. It is: "*Whether the Federal Housing Administration, through its State Director*, is subject to garnishment for moneys due to an employee." (Emphasis supplied.)

Munro v. *United States*, 303 U. S. 36, 41. Cf. *United States* v. *Turner*, 47 F. (2d) 86 (C. C. A 8th). In *United States* v. *Cummings*, 85 F. (2d) 273 (App. D. C.), a judgment against an officer in his official capacity in a suit which had been begun against a predecessor was held wholly void, because of failure to secure an order of substitution.

Plainly the defect here, whether or not subject to waiver, is more than a mere technicality. The local director had no authority to submit to the jurisdiction of the state court, even if garnishment against the Administrator were authorized. The Administrator, even if he had been named as a party, might have refused to accept service of process of the state court. It was clearly the intention of Congress to protect the Administration from certain of the harassments of litigation by confining suability to a forum where the Administrator was amenable to service of process, and by leaving the question of his participation in other litigation, whether as plaintiff or defendant, to his sound discretion.[7] And this Congressional policy is considerably impaired if a local director or a United States Attorney can by their conduct thwart the statutory scheme that the Administrator must be served or appear voluntarily.

If, however, the Administrator has power to do so, he desires to waive for this case the misnomer of the defendant and the defective service. On the other hand, if the judgment is affirmed, it should be reformed so as

[7] Cf. Section 30 of the Trading with the Enemy Act, 50 U. S. C. A., Appendix, c. 167, 45 Stat. 254, 275, which expressly limited garnishment suits to the District of Columbia.

to run against the Administrator in his official capacity rather than against the Administration.

II

THE FEDERAL HOUSING ADMINISTRATOR IS NOT SUBJECT TO GARNISHMENT

A. THE GOVERNMENT IS IMMUNE FROM GARNISHMENT

It has been settled since *Buchanan* v. *Alexander*, 4 How. 20, that no creditor of a Government employee can attach or garnish his wages by action against the United States, its officer or the funds from which such wages will be paid, unless the United States has consented to such proceedings.[8] This rule is unquestionably derived from and connected with the principle that the United States cannot be sued without its consent,[9] and that suits against property of the United States [10] or to establish interests therein [11] or affecting the use thereof [12] likewise cannot be maintained without the

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[8] See also *McGrew* v. *McGrew*, 38 F. (2d) 541, 544 (App. D. C.), certiorari denied, 281 U. S. 739; *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.) certiorari denied, 285 U. S. 547.

[9] *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 388; *Morrison* v. *Work*, 266 U. S. 481; *Nassau Smelting Works* v. *United States*, 266 U. S. 101; *Schillinger* v. *United States*, 155 U. S. 163; *United States* v. *Clarke*, 8 Pet. 436.

[10] *Goldberg* v. *Daniels*, 231 U. S. 218, 221–222; *Stanley* v. *Schwalby*, 147 U. S. 508, 512; *Walker* v. *Ford*, 269 Fed. 877. Cf. *Berrizzi Bros. Co.* v. *S. S. Pesaro*, 271 U. S. 562.

[11] *Leather* v. *White*, 266 U. S. 592, affirming 296 Fed. 477; *Cunningham* v. *Mason & Brunswick R. R.*, 109 U. S. 446.

[12] *Oregon* v. *Hitchcock*, 202 U. S. 60; *Louisiana* v. *Garfield*, 211 U. S. 70, 78; *International Postal Supply Co.* v. *Bruce*, 194 U. S. 601, 606; *Belknap* v. *Schild*, 161 U. S. 10, 24–25.

consent of the United States. As respects the Federal Housing Administrator, Congress has, however, relaxed the immunity from suit by providing that the Administrator shall, in carrying out certain parts of the National Housing Act, be authorized to be sued (Act of August 23, 1935, c. 614, Sec. 344 (a), 49 Stat. 684, 722). Whether this relaxation of immunity extends to garnishment depends, under the decisions of this Court, on both the wording of the statute and the presumable Congressional intention in the light of all relevant circumstances and considerations. See *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 231–232; *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, 389. Here plainly there is no explicit consent to garnishment, the statutory language tends to preclude garnishment by strangers to transactions with the Administrator, and numerous considerations strongly indicate that no implied consent should be found.

B. THE IMMUNITY ASSERTED IS FOR THE BENEFIT OF THE GOVERNMENT ITSELF, AND IS AGAINST STRANGERS TO ITS TRANSACTIONS

While the trend of the times is to relax the strictness of various immunities formerly thought to be implied by sovereignty and our federated system (E. g., *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381; *James* v. *Dravo Contracting Co.*, 302 U. S. 134; *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466) ~~that~~ here is, it is submitted, a sharp distinction between according immunities to private persons who chance to deal with the Government and immunities inhering in the Government itself, including, of course, its instrumentalities which are a part of the governmental structure (Cf. *Clallam County* v.

United States, 263 U. S. 341; *Pittman* v. *Home Owners' Loan Corporation*, No. 10, this Term, decided November 6, 1939). There is no reason why federal employees or contractors, so far as they alone are concerned, should be exempt from the nondiscriminatory exercise of normal remedies by their creditors against their wages or salary or contract price merely because their employment or transaction is with the Government. But from the standpoint of the Government there are potent reasons[13] why, in the absence of a clear consent, it should not be forced to be a party to litigation for collection of obligations arising out of transactions to which it was not a party nor into litigious relations with persons with whom it has had no dealings. Decisions curtailing governmental immunity have in the tax field dealt with private beneficiaries of the immunity (*Graves* v. *New York ex rel. O'Keefe*, *supra*) and in the suability field with suits growing out of transactions to which the Government or its instrumentality had been a party (*Federal Land Bank* v. *Priddy*, 295 U. S. 229; *Keifer & Keifer* v. *R. F. C.*, *supra*). There is nothing in the decisions of this Court tending to relax the immunity of the Government itself from state or local taxation[14] or to relax its immunity from suits based on transactions to which it was not a party.

The "dominant contemporaneous opinion" which occasioned the relaxation of immunity from suit in the *Keifer* case was the emerging disfavor of "legal irre-

[13] Set forth in detail, *infra*, pp. 19–33.

[14] This distinction is developed in more detail in our brief (pp. 37–49) in *Pittman* v. *H. O. L. C.*, No. 10, October Term, 1939.

sponsibility" of the Government. The immunity here asserted will not make for "legal irresponsibility"; it will merely confine the Administrator's obligation to respond to those with whom he or the Administration has had dealings. The Government can escape no legal obligation of its own or of the Administrator or Administration through freedom from garnishment process.

There being reasons for maintaining the immunity of the Administrator from garnishment for the Government's own protection, it is not controlling that as a consequence of that immunity benefit may flow to Government employees.

C. CONSIDERATIONS OF POLICY SHOW THE NEED FOR PROTECTING THE ADMINISTRATOR FROM GARNISHMENT

The procedural burden of subjecting the Administrator to garnishment process would be directly on the Government. In view of the settled rule that the Government is not subject to garnishment, the burden on the Government of garnishment to date has been relatively small, but it is safe to predict that if the decision below in the present case is affirmed the burden on the Federal Housing Administration and hence on the Government will hereafter be very substantial.

The reported cases [15] in which efforts have been made to subject the Government or its instrumentalities to

[15] Unsuccessful efforts: *McGrew* v. *McGrew*, 38 F. (2d) 541 (App. D. C.), certiorari denied, 281 U. S. 739; *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547; *Home Owners' Loan Corporation* v. *Hardie & Candle*, 171 Tenn. 43;

garnishment process are almost certainly but a small proportion of the cases which have been brought, and are merely suggestive of the considerable, and possibly prodigious number of cases that would be brought if this Court held garnishable Government agencies which Congress has authorized to sue and be sued.[16] The recent growth in the number of governmental agencies and corporations and the wide range of their operations[17] gives ground for real apprehension as to the extent of the possible burden.

The extent to which a garnishment may be an interference with the normal functionings of government is well illustrated by *United States* v. *Winkle Terra Cotta, Inc.*, No. 11,547, now pending on appeal before the United States Circuit Court of Appeals for the Eighth Circuit. The creditor there brought garnishment proceedings in the state court against the St. Louis Director of the Federal Housing Administration, who moved to dismiss, but was unsuccessful. Judgment went against the Federal Housing Administration. An appeal on behalf of the United States was disallowed on the ground that the United States was a 'stranger' to

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Manufacturers Trust Co. v. *Maxwell Ross*, 252 App. Div. (N. Y.) 202.

Successful efforts: *Central Market* v. *King*, 132 Neb. 380, certiorari denied, 302 U. S. 687, on ground that the judgment below was not final; *Gill* v. *Reese*, 53 Ohio App. 134; *McAvoy* v. *Weber*, 88 P. (2d) 448 (Wash.).

[16] In the *Keifer* case the Court listed forty Government agencies upon which Congress has conferred authority to sue and be sued.

[17] See "Federal Corporations and Corporate Agencies," Harvard Business Review, Vol. XVI, 136; "Government Corporations and Federal Funds," 31 American Political Science Review, 1094.

the record. The United States then filed an injunction suit in the United States District Court for the Eastern District of Missouri against the creditor and the sheriff, to enjoin execution against the property of the Federal Housing Administration. The District Court dismissed the suit, and the United States has taken an appeal. The creditor has served writs of garnishment upon certain banks as debtors of the Federal Housing Administration, and enjoined them from paying over money to the Federal Housing Administration until the debt was paid. Furthermore, the Federal Housing Administration cannot dispose of local property acquired through foreclosure because title companies have excepted the garnishment judgment from their guaranties of clear title.[18]

If to the manifold duties of each federal agency there were added the burden of preparing answers, disclosures, and returns to numerous garnishment processes in the courts of each of the 48 states[19] it is not difficult to see that the federal functions would be appreciably impeded. There would be the burden of gathering and presenting the precise facts as to the Government's liability to the principal debtor, many of which facts would be ascertainable only by search of records and

[18] Matter pertaining to the foregoing difficulties is included in the Appendix, *infra*, pp. 72–75.

[19] "To carry out its activities the Federal Housing Administration maintains its headquarters in Washington and has established one or more offices in each State; one in Hawaii; and one in Alaska; altogether offices have been established in 104 important cities throughout the United States." Fifth Annual Report, Federal Housing Administration, p. 8, House Document No. 273, 76th Congress, 1st session.

at distant places, of ascertaining the right of the garnishment creditor, of preparing proofs and evidence, and of court appearances of counsel. The garnishment creditor could demand the production of the Government's books. And garnishment is not limited to relatively simple claims like wage claims. Even to permit an intelligent inspection by numerous garnishment creditors would produce a heavy and often repeated burden on the agency's staff. In the inevitable event of disputes, the Government would be faced with numerous and protracted suits. The Government, unlike a private employer, is bound to make strict defense; nor can Government officials submit the Government to any risk of double liability. Since the operations of the Federal Government's agencies reach into every jurisdiction in the United States, the Government would be faced with a substantial obstacle to the efficient conduct of its business if its agencies were subject to garnishment at the instance of every creditor of a debtor to whom they owed money.[20]

1. *Courts and legislatures have recognized the burden of garnishment on public bodies.*—The widespread judicial exemption of public institutions from the orbit of general garnishment statutes has been based on the desirability that such bodies be free from the manifold, even if incidental, burdens upon a garnishee, such as increased legal and bookkeeping costs, the annoyance of court appearances and returns, impossibility of

[20] A similar argument in reference to the immunity of the Government from state taxation is included in our brief (pp. 40–41) in *Pittman* v. *Home Owners' Loan Corporation*, No. 10, October Term, 1939.

finally settling accounts, and the occupation of the time of officials with suits with which the public institution has no concern.[21]

Legislatures have also seen the need for relieving public bodies from these burdens. Some have expressly forbidden, in greater or lesser degree, the garnishment of public officials or institutions.[22]

Statutes which expressly permit garnishment of public bodies in many cases contain provisions designed to mitigate the more pressing of the burdens resulting from susceptibility to garnishment. Some legislative schemes provide that the garnished official or body need not appear personally or may file a simplified return. (Colo. L. 1927, ch. 112; Nebr. Comp. Laws (1929), sec. 20–1012, 20–1013; N. M. Comp. Stat. (1929), sec. 59–127; S. D. Comp. Laws (1929), Sec. 2112–A–B), or that any oral testimony be so taken as to cause the least inconvenience to the official (Minn. Stat. (Mason's,

[21] See, e. g., *McDougal* v. *Board of Supervisors of Hennepin County*, 4 Minn. 184, at 189; *Merwin* v. *City of Chicago*, 45 Ill., at 135; *Switzer* v. *City of Wellington*, 40 Kan. 250, at 251, 254; *Duval County* v. *The Charleston Lumber Co.*, 45 Fla. 256, 262, 263; *Van Cott* v. *Pratt*, 11 Utah 209, at 212–213.

[22] See, e. g., Ga. Code (1933), sec. 46–206 (salaries of officials and employees of municipal corporations not subject to garnishment); Iowa Code (1935), sec. 12159 ("A municipal or political corporation shall not be garnished"); La. Code of Practice, Art. 647 (salaries of officials and state employees not garnishable); *cf.* La. Civil Code, Art. 1992; Mass. Gen. Laws (1932), c. 246, sec. 32, (The Commonwealth cannot be trusteed, *Dewey* v. *Garvey*, 130 Mass. 86, but cities, towns, and counties may be. *Hooker* v. *McLennan*, 236 Mass. 117); Mo. Rev. Stat. (1919), sec. 1848 (county collector, county treasurer, and municipal corporations cannot be garnisheed); Tex. Stat. (Vernon, 1936), Art. 1175 (5) (home-rule cities may immunize themselves from garnishment).

1927), sec. 9364. Va. Code (1930, sec. 6559–61)). Some statutes recognize the probability of burdensome controversies as to the proper amounts due by making the return of the government as to its debts to the principal defendant conclusive. (S. D. Comp. Laws (1929), sec. 2112–B: Utah Rev. Stat. (1933), sec. 104–19–26; *cf.* N. Y. Civil Practice Act, sec. 684 (8); N. M. Comp. Stat. (1929), sec. 59–127). To cover the increased cost to public bodies of permitting garnishment, at least one state imposes a fee for the privilege of securing disclosure (N. D. L. 1929, ch. 188). The use of the remedy against the state or public organization is also commonly restricted to cases where the plaintiff has secured a judgment against the principal debtor.[23]

2. *Factual data likewise shows the burden of garnishment on public bodies.*—This judicial and legislative recognition that interference with governmental functions is likely to accompany abrogation of the immunity from garnishment is confirmed in the experiences both of public institutions which have been subject to garnishment and of large private employers. A study made under the auspices of the Bureau of Labor Statistics of the United States Department of Labor revealed that in the area chosen for investigation, public service employees (employees of state, city, and local jurisdictions) were subjected to garnishment of wages and salaries at least two or three times more frequently

[23] Ala. L. 1923, No. 427; Cal. Code Civil Proc., sec. 710; Mich. Comp. Laws (1929), sec. 14902; N. M. Comp. Stat. (1929), sec. 59–127; N. Y. Civil Prac. Act, sec. 684 (8); Va. Code (1930), sec. 6559–61; Wash. Rev. Stat. (Remington), sec. 680–1–4; Wis. Stat. (1937), sec. 304.21; N. J. Rev. Stat. (1937), sec. 2:26–182 to 2:26–187).

than other occupational groups of workers.[24] Studies of the incidence of executions on the wages of employees of large private concerns disclose that the claims upon such employers are many, and the amount of time consumed and of necessary clerical attention is large.[25]

[24] Nugent, Hamm, Jones, *Wage Executions for Debt;* Bull. No. 622, Bureau of Lab. Statistics, U. S. Dept. of Labor (substantially reprinted in 42 Monthly Labor Review 285, 578; 43 Monthly Labor Review 51 (1936)), Tables 6 and 7 (Bull. No. 622, pp. 13–15; 42 Monthly Labor Review at pp. 297–299).

TABLE 6

Employer	Av. No. of employees	Number of executions	Rate per 1,000 employees
32 indus. establishments	16,555	341	20.6
New York City Admin.	[1] 135,000	10,691	79.2
A large railroad company	43,129	1,550	35.9

[1] Estimate.

Table 7 indicates that in Westchester County, New York (in 1934), the rate of garnishments of public service employees was the highest of all occupational groups, i. e., 15.3 per 1,000 persons subject to garnishment; the next highest figure is 8.7 for the group of employees in the service industries and trades. In New York and Kings counties the rate for public service employees was also highest, 92.9; the next highest figure was 13.6 for employees of manufacturers of nonpostponable goods. The study concludes that "in this area public service employees * * * are subject to frequent garnishment as compared with other occupational classes," but assigns no reason for this difference. Bull. No. 622 at p. 613.

On December 31, 1938, the number of regular employees of the Federal Housing Administration, exclusive of those employed on a per diem basis, was 4,055. Fifth Annual Report, Federal Housing Administration, p. 10. House Document No. 273, 76th Cong., 1st sess. At the rate of garnishment experienced by the New York City Administration, the Federal Housing Administrator would be subjected to 321 garnishments annually in respect of regular employees.

[25] Fortas, *Wage Assignments in Chicago* (1933), 42 Yale L. J. 526, 539–545.

It has been found that "the expense which wage assignments and garnishments put upon employers is fugitive, but nevertheless real. * * * Larger establishments * * * frequently maintain special departments for handling wage executions; which employ clerks and occasionally an attorney."[26] That wage executions cause expense and annoyance to the employer is universally attested to, moreover, by the measures of self-help adopted by employers to free themselves from the nuisance, such as discharging the delinquent employee.[27]

[26] Nugent, Hamm & Jones, *Wage Executions for Debt*, Bull. No. 622, Bur. of Labor Stat. U. S. Dept. of Labor (1936) p. 36; 43 Monthly Labor Review at 58.

See Fortas, *supra*, at p. 545, regarding Armour & Co.'s activities: "A high-salaried man in the personnel department devotes his entire time to wage assignments and garnishments against the company's plant employees. Two young attorneys spend part of their time assisting him. The wage assignment must be recorded in a permanent book and notices to detain wages must be sent to cashier and paymaster; the employee must be informed by whom his wages are claimed; releases must be received and notices thereof sent to cashier and paymaster. If the employee complains that his wages are unjustly claimed, the creditor is telephoned. This is considered a service to the employee (as indeed it may be in view of the unlikelihood of suit by the employee), not a protection to the company against the employee's suit if his wages are paid the creditor on an unjustified claim or an invalid assignment, and the creditor's word is generally accepted."

[27] Fortas, *supra*; Nugent, Hamm and Jones, *supra*, at 527 (43 Monthly Labor Review at 59); see also Smith, *History and Purpose of the Wage Assignment Statutes* (1920), 5 Mass. L. Q. 479, 487; Rosenthal, *Two Recent Cases on Wage Assignments* (1920), 5 Mass. L. Q. 472, 477–478. Employers have sought to bar executions by their molding of the employment contract. So far as has been found these attempts have been unsuccessful. They reflect, however, the anxiety of employers to free themselves from the burden of garnishment.

Since, as a practical matter the Government is not as free to terminate employment as private employers, and so to protect itself in part from the harassments of garnishment, whatever the morality of such measures, it has no means of avoiding the burden and it would be severely and unequally disadvantaged by being put in the same legal position as private employers.

In the present case, garnishment was sought only after a judgment against the principal debtor had been obtained. But if the use of the remedy is sustained here on the ground relied on below, that suability includes all civil process, it will follow by like reasoning, that garnishment, attachment, and a multiplicity of related remedies will be available in many states to plaintiffs as soon as the action is commenced.[28]

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[28] In at least sixteen states, garnishment, or a comparable remedy, may be had in most cases before judgment, without difficulty:

Alabama Code (1928), secs. 8051, 2, 3.

Arizona Rev. Code (1928), sec. 4258.

Arkansas Dig. Stat. (Pope, 1937), c. 77, sec. 6119.

California Code Civ. Proc. (1937), secs. 537-41.

Connecticut Gen. Stat. (1930), secs. 5712, 5763 (trustee process).

Florida Comp. Laws (1927), secs. 5284, 5299.

Georgia Code Ann. secs. 46-101, 46-102.

Massachusetts Gen. Laws (1932), c. 223, sec. 42; c. 246, sec. 1 (trustee process).

Maine Rev. Stat. (1930), c. 95, sec. 2; c. 100, secs. 1, 55.

Minnesota Stat. (Mason's 1936 Supp.), sec. 9356.

New Hampshire Pub. Laws (1926), c. 356 (trustee process).

New Mexico Stat. Ann. (1929), secs. 59-101.

Rhode Island Gen. Laws (1938), ch. 546, sec. 1; ch. 548, secs. 1-2; ch. 550 (trustee process).

S. D. Comp. Laws (1929), sec. 2453.

Texas Rev. Civ. Stat. Art. 4076.

Vermont Pub. Laws (1933), ch. 76, sec. 1746 et seq. (trustee process).

These remedies are not confined to actions on contractual claims against the principal defendant, and would be available to reach not merely wage claims against the Government but all money obligations owing to the principal defendant by the Government. With these methods of harassing the principal defendant at hand, and insuring ultimate collection of any judgment that might be rendered, it may be presumed that plaintiffs would seek to garnish as early as possible. The provisions in many state statutes disallowing garnishment on public bodies before judgment suggests a similar need for protection in that regard for the federal Government.

3. *A statutory scheme, rather than judicial abrogation of the immunity, is virtually indispensable.*—The state statutes permitting garnishment of public institutions indicate legislative recognition that if the remedy is to be permitted, the procedure must be carefully differentiated from that available against ordinary garnishees.[29] We have cited, *supra*, pp. 23–24, various state statutory provisions for restricting and regulating garnishment against public bodies, such as limiting garnishment to cases where judgment has been obtained in the principal action, making the return of the public official conclusive as to the indebtedness of the public body to the principal debtor, excusing the official from court appearance, lightening the burden on him if oral.

[29] Compare for example, § 3834 (14–29) of West Va. Code (1939 Supp.) (L. 1939, c. 66) dealing with garnishment against public bodies, with § 3834 (1–13) of West Va. Code (L. 1939, c. 67) dealing with garnishments against private persons.

deposition is necessary, or imposing fees on the plaintiff for the privilege.

Many other statutory variations from ordinary garnishment procedure are provided where the garnishee is a public agency. Alabama requires the consent of a public official (L. 1923, No. 427). Colorado (L. 1927, ch. 112) and Nebraska (Comp. Laws (1929), sec. 20–1013) provide that the official return need not include checks or warrants already drawn and signed but not yet issued. Both California (Code Civil Procedure, sec. 710 *et seq.*) and Wisconsin (Stat. (1937) sec. 304.21) allow no garnishment of sums due to contractors for public works.

Some states establish unique and elaborate procedures for collecting the garnished funds. N. Y. Civ. Pract. Act, sec. 684 (8); Wash. Rev. Stat., sec. 680–1–4 (no regular judgment in garnishment against the state but a "command" by the court to the state auditor); Wis. Stat. (1937), sec. 304.21. Others take especial care that the state be not held liable for the main debt. N. D. L. 1929, ch. 188; S. D. Comp. Laws (1929), sec. 2112–B. Certain statutes establish special rules as to service of process (Okla. Stat., Title 12, sec. 1193; Utah Rev. Stat. (1933), sec. 104–19–25–26). A comparable need of the Federal Government for extended time in which to answer in litigation is shown by Rule 12 (a) of the Federal Rules of Civil Procedure.

There are numerous variations in the type of claims which the statutes permit to be garnished in the case of public bodies. Certain of the statutes seem to cover all debts owing by the state (e. g., Okla. Stat. Title 12,

sec. 1192; Idaho Code (1932), sec. 6–507; Kan. Gen. Stats. (1935), sec. 60–940, 60–962), while others only wages and salaries of officials and employees (e. g., Ala. L. 1923, No. 427). The compensation of certain officials is specially exempt in some states (Ala. L. 1923, No. 427; Colo. L. 1927, ch. 112; Neb. Comp. Laws (1929), sec. 20–1012 et seq.). There are differences as to the duration of the lien of the garnishment writ (N. Y. Civ. Prac. Act, sec. 684 (6, 8); and Wis. Stat. (1937) sec. 304.21, both apply the lien to all sums coming due thereafter, until the principal judgment is paid), and as to the subject matter of the claim (Ala. L. 1923, No. 427 permits no garnishment on judgments arising from tort claims). Certain statutes apparently cover the state and all its subdivisions (e. g., Ala. L. 1923; No. 427; Mich. Comp. Laws (1929), sec. 14902; N. Y. Civ. Prac. Act, sec. 684 (8)), while others apply only to counties or municipal corporations or minor bodies or only some of these (e. g., Minn. Stat. (1927), sec. 9364; Idaho Code (1932), sec. 6–507; Nevada Comp. Laws (1929), Sec. 8710; Va. Code (1930), sec. 6559–61).[30]

If there is one conclusion which can be drawn from the existence of these permutations and combinations, it is that the abrogation of the immunity of public bodies from garnishment, if a desirable objective, is one that can be accomplished satisfactorily only by

[30] There are some states in which there seem to be no special provisions concerning garnishment of public bodies. Ariz. L. 1929, c. 50; Kan. Gen. Stats. (1935) sec. 60–940, 60–962; Mont. Rev. Codes (1921) sec. 9294; Tenn. Code (1934), Sec. 7714; Oreg. Laws (1920) sec. 258; Wyo. Rev. Stat. (1931), sec. 89–3113.

legislation. Even if the immunity of Government agencies from garnishment should be relaxed, the question whether the remedy should be molded in this way or that to fit the needs of government involves innumerable considerations which as a practical matter can be adjusted only by statute. These state statutes make apparent the need for a complete scheme for the application of the remedy to public bodies. Judicial abrogation of the principle of immunity would be inadequate. The state legislatures have made their variant choices. Here an authority to be sued, without any statutory scheme for subjecting the agency to garnishment, should not be construed as consent to garnishment.

4. *It is the general policy of the federal Government not to account to strangers.*—Legislation has long been on the books making the assignment of claims against the United States void, except in certain situations after the issuance of a warrant for payment.[31] Its pur-

[31] R. S. sec. 3477:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or the authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgements of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same * * *."

pose is to protect the Government against the danger of "becoming embroiled in conflicting claims, with delay and embarrassment", and against being "harassed by multiplying the number of persons with whom it had to deal." *Martin* v. *National Surety Co.*, 300 U. S. 588, 594; *Hobbs* v. *McLean*, 117 U. S. 567, 576. Moreover, "its obvious purpose, in part, was to forbid any one who was a stranger to the original transaction to come between the claimant and the Government, prior to the allowance of a claim, and who, in asserting his own interest or share in the claim, pending its examination, might embarrass the conduct of the business on the part of the officers of the Government." (*Nutt* v. *Knut*, 200 U. S. 12, 20.) The statute was also of aid to the United States in that it rendered unnecessary the burdensome investigation of the validity of an alleged assignment. *Spofford* v. *Kirk*, 97 U. S. 484, 489–90.[32]

In particular classes of cases the bar of this statute has been raised, but always on conditions insuring protection to the United States. The Secretaries of Agriculture (Act of March 4, 1909, c. 301, 35 Stat. 1039, 1057, 5 U. S. C. 529), and Commerce (Act of June 17, 1910, c. 297, 36 Stat. 468, 524, 5 U. S. C. 595) may permit their employees to assign their wages, but only under the rules and regulations which they may prescribe. The Secretary of War has similar power to regulate the assignment by army officers of their pay. (Act of

[32] To the same general effect, see *McGowan* v. *Parish*, 237 U. S. 285, 291; *Goodman* v. *Niblack*, 102 U. S. 556, 560; *Bailey* v. *United States*, 109 U. S. 432, 439–40; *Freedman's Savings & Trust Company* v. *Shepherd*, 127 U. S. 494, 506; *Price* v. *Forrest*, 173 U. S. 410, 423.

March 2, 1907, c. 2511, 34 Stat. 1158, 1159, 10 U. S. C. 891.)[33] The assignment of contractors on emergency public works of their claims against the Government is permitted, but only if approved (Act of June 16, 1933, c. 90, 48 Stat. 195, 205, Title II, sec. 207 (a), 40 U. S. C. 407). The Agricultural Adjustment Act of 1938 provides another method of protection to the Government against dangers inherent in the permitted assignment of soil conservation payments by reserving to the Government the option to make payment without regard to the assignment. C. 30, 52 Stat. 31, 35, sec. 103 (g), 16 U. S. C. 590 h (g).

D. THE FEDERAL HOUSING ADMINISTRATION IS AN ORDINARY PART OF THE GOVERNMENT, AND GARNISHMENT OF IT IS GARNISHMENT OF THE UNITED STATES

The Federal Housing Administration was created and the Federal Housing Administrator was appointed on June 30, 1934,[34] pursuant to Section 1 of the National Housing Act, approved June 27, 1934, c. 847, 48 Stat. 1246. That Act was part of the broad plan adopted to remedy the urban home mortgage crisis. Section 1 provides that all the powers of the Administration are to be exercised by a Federal Housing Administrator, and further provides for the appointment of the officers, agents, and employees necessary to its operation.

Any doubt whether the functions of the Administration and Administrator are governmental was set at

[33] Cf. Joint Resolution of March 21, 1906, No. 10, 34 Stat. 824, 48 U. S. C. 171, permitting assignment of pay by teachers in Alaska under regulations of the Secretary of the Interior.

[34] See Executive Order No. 7280, promulgated January 28, 1936, evidencing the creation of the Federal Housing Administration on June 30, 1934, and validating and confirming the creation thereof.

rest by *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477, in which it was stated that since the "government derives its authority wholly from powers delegated to it by the Constitution, its every action within its constitutional power is governmental action."

And notwithstanding the provisions of Section 1 of the National Housing Act exempting the Administrator from "provisions of other laws applicable to the employment or compensation of officers or employees of the United States" and from "other provisions of law governing the expenditure of public funds" (Act of June 27, 1934, c. 847, 48 Stat. 1246–1247), the Administration functions in fact as an ordinary part of the Government [35] without fiscal independence such as might support an implication of suability in the absence of express authority, or such as might warrant an expanded construction of the "sue-and-be-sued" clause here involved.

All money used for payment of salaries of Federal Housing Administration employees is public money which cannot be drawn from the Treasury unless appropriated for that purpose by Congress.[36] (Constitu-

[35] See excerpts from First and Fifth Annual Reports of Federal Housing Administration, included in the Appendix, *infra*, pp. 55–62. See also General Order No. 2, Federal Housing Administration, included in the Appendix, *infra*, pp. 69–71.

[36] Under section 4 funds were to be obtained through the Reconstruction Finance Corporation, and at the President's discretion from any funds available to him for emergency purposes. The Reconstruction Finance Corporation is now credited, as for a repayment on a debt owing by it to the United States, for all the funds appropriated through it for the Federal Housing Administration, by the cancellation of notes of the corporation, and it is provided that any recoveries of funds disbursed for the Admin-

tion, Article I, Section 9. Cf. *Cummings* v. *Hardee*, 102 F. (2d) 622, 627, certiorari denied, 307 U. S. 637). All money so used is in fact so appropriated (e. g., c. 396, 50 Stat. 329, 350; c. 259, 52 Stat. 433). Salaries are paid upon the checks of the Disbursing Officer of the United States through the Division of Disbursement of the Treasury Department, in the same manner as salaries of other Government employees. (See e. g., Section 4, Executive Order 6166, June 10, 1933; F. H. A. Annual Report, 1938, House Document No. 273, 76th Congress, 1st Session, pp. 157, 174; F. H. A. Report, 1935, pp. 26, 44–47.)[37]

Disbursements and expenditures are made by the Chief Disbursing Officer of the Treasury (Third Annual Report of the Administration, pp. 53, 57). Funds for disbursement through him are made available in accordance with regular governmental appropriation, requisition, and disbursement procedure (Fourth Annual Report of the Administration, p. 91). All regular expense and other vouchers of the Administration are sent directly to him for payment and unusual vouchers are forwarded to the Comptroller General for preaudit (Fifth Annual Report of the Administrator, p. 174; Fourth, *id.*, p. 102; Third, *id.*, p. 57). The Comptroller General of the United States has uniformly treated the Administration as an integral part

istration, the disposition of which is not otherwise provided for by law, "shall forthwith be covered into the general funds of the Treasury." Act of February 24, 1938, c. 32, 52 Stat. 79–80, secs. 1 and 2.

[37] See also Statement of Facts accepted by appellee below, *supra*, pp. 3–4, note 3.

of the Government. (See, for instance, 15 Comp. Gen. 869, 870, 871; 16 Comp. Gen. 336, 338.)

Regular budgetary estimates of salaries and expenses have been submitted to the Director of the Budget for each year's expenditures (Third Annual Report of the Administration, p. 57; Fourth, *id.*, p. 91), and estimates for salaries and general operating expenses are regularly submitted to Congress in cooperation with the Director of the Budget (Fifth Annual Report of the Administrator, p. 157).

The Administrator is subject in some respects to the supervision of other officers of the Government. He can assign or sell property held by him in connection with the payment of insurance and collect or compromise obligations and legal or equitable rights only under regulations approved by the Secretary of the Treasury. Section 2 (c), c. 165, 49 Stat. 1187. The terms, conditions, and rate of interest payable on the Administrator's debentures is subject to the approval of the Secretary of the Treasury. Sections 204 (c) and (d), 207 (i), c. 13, 52 Stat. 8. The fiscal transactions of the Administration are subject to the supervision of the Comptroller General, and its budget matters to the supervision of the Director of the Budget and Congress, as noted hereinbefore.[38]

[38] Other indicia that the Administration is an ordinary branch of the Government are: establishment of and maintenance of accounts and records in accordance with government procedure (Fifth Annual Report, Federal Housing Administration, p. 157); prescription by the Comptroller General of a system of administrative accounts pursuant to section 309 of the Budget and Accounting Act, 1921, c. 18, 42 Stat. 20, 25, following generally the uniform accounting system of the Government (Letters from

A successful garnishment in Michigan thus would bring into operation in Washington the disbursement procedure at the Treasury and the auditing procedure of the Comptroller General. The practical fact is that the money sought to satisfy the respondent's claim constitutes funds of the United States. The fact that the money may have become owing to government employees does not change its character prior to actual disbursement. *Buchanan* v. *Alexander*, 4 How. 20, 21.

In view of these circumstances it is clear that, so far as the funds sought to be attached are concerned and so far as concerns the relationship of the principal debtor to the Government, there would be no difference be-

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Comptroller General to Administrator, July 11, 1936, and January 23, 1936, included in Appendix, *infra*, pp. 62–69); establishment by the Treasury Department and the Comptroller General of the regular governmental procedure for handling funds (Fourth Annual Report, Federal Housing Administration, p. 10); classification of employees and review and revision thereof by Civil Service Commission in accordance with Executive Order No. 6746, of June 21, 1934; initial appointments "as far as possible" in accordance with grades and salaries of Classification Act of 1923, c. 265, 42 Stat. 1488, and apportionment according to Apportionment Act of January 16, 1883, c. 27, 22 Stat. 403, 404 (Sec. 2 (2) (3) (First *id.*, p. 22); observance of standard travel regulations (Independent Offices Act, 1938, approved June 28, 1937, c. 396, 50 Stat. 329, 350). The annual reports of the Federal Housing Administration are printed as House Miscellaneous Documents, as follows: First (1934) Doc. 88, 74th Congress, 1st Session, S. N. 9927; Second (1935) Doc. No. 358, 74th Congress, 2nd Session, S. N. 10072; Third (1936) Doc. No. 48, 75th Congress, 1st Session, S. N. 10172; Fourth (1937) Doc. No. 696, 75th Congress, 3rd Session, S. N. 10284; Fifth (1938) Doc. No. 273, 76th Congress, 1st Session. Excerpts from the first and the latest reports are included in the Appendix, *infra*, pp. 54–62. See also, General Order No. 2, Appendix, *infra*, pp. 69–71.

their usual and ordinary sense.[8] State decisions barring garnishment against a public body though it may "sue and be sued"[9] are not persuasive here as they reflect purely local policies concerning municipalities, counties and the like, and involve considerations not germane to the problem of amenability to suit of the modern federal governmental corporation.

Our conclusion is strengthened by the legislative history of the many recently created governmental agencies or corporations. It shows that in but few instances was a proviso added to the "sue and be sued" clause prohibiting garnishment or attachment.[10] The fact that in the run of recent statutes no such exceptions were made and that in only a few of them were any special prohibitions included adds corroborative weight to our conclusion that such civil process was intended.

Up to this point, however, petitioner does not raise its major objections. Rather it grounds its claim to immunity from garnishment largely on statutory construction and on matters of policy. As to the former, it relies heavily on the fact that the authority to "sue and be sued" excludes cases unrelated to the Administrator's own duties or liabilities since the statute provides that the "Administrator shall, in carrying out the provisions of this title [Title I] and titles II and III" be authorized to "sue and be sued." Petitioner therefore contends that Congress has consented to a suit against the Administrator only where the plaintiff is a party to a

[8] In Weston v. City Council of Charleston, 2 Pet. 449, 464, Chief Justice Marshall, in defining the word "suit", as used in the 25th section of the Judicial Act of 1789 giving this Court jurisdiction to review on enumerated conditions a "final judgment or decree in any suit in the highest court of law or equity of a state in which a decision in the suit could be had" (43 Stat. 937), said:

"The term is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice, by which an individual pursues that remedy in a court of justice, which the law affords him. The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought, is a suit."

[9] Central of Georgia Ry. Co. v. City of Andalusia, 218 Ala. 514; Duval County v. Charleston Lumber Co., 45 Fla. 256, 265; City of Chicago v. Hasley, 25 Ill. 595.

[10] As respects the forty government corporations listed in Keifer & Keifer v. Reconstruction Finance Corporation, *supra*, pp. 390-391, where Congress included the authority to "sue and be sued", express prohibition against attachment and garnishment was provided in only two instances. They are the Federal Crop Insurance Corporation (52 Stat. 72, 73) and the Farmer's Home Corporation (50 Stat. 527).

transaction with him which in turn is related to "carrying out" the provisions of those titles. Title I contains the only provisions material here. Sec. 1 gave the Administrator, *inter alia*, authority to appoint such officers and employees "as he may find necessary;" to "prescribe their authorities, duties, responsibilities, and tenure and fix their compensation, without regard to the provisions of other laws applicable to the employment or compensation of officers or employees of the United States;" and to "make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing, and binding) as are necessary to carry out the provisions of this title and titles II and III, without regard to any other provisions of law governing the expenditure of public funds." Sec. 2 gave limited authority to the administrator to insure financial institutions; § 3, authority to make loans to such institutions. Since the Administrator could be sued, in his official capacity, in "carrying out" the provisions of Title I, it would seem clear that such suits as were based on employment contracts made pursuant to the authority granted by § 1 were permitted. Accordingly, it seems clear that Brooks, whose claim[11] was garnisheed by respondent, could have sued on that claim and obtained the benefit of that civil process which was available in the appropriate state or federal proceeding. *Federal Land Bank* v. *Priddy, supra.* To allow respondent to reach that claim through a writ of garnishment is therefore not to enlarge petitioner's liability nor to add one iota to the scope of § 1. For the end result is simply to allow a suit for the collection of a claim on which Congress expressly made petitioner suable. The mere change in the payee does not make the suit unrelated to the duties and liabilities of the Administrator under § 1.

But petitioner strongly urges considerations of policy against this conclusion and stresses the heavy burdens which would be imposed on such governmental instrumentalities if garnishment were permitted. It asserts that the task of preparing answers, disclosures and returns to numerous garnishment processes in the courts of each of the states would appreciably impede the federal

[11] While the record shows that Brooks had been "connected" with the petitioner it does not show the nature of the debt due him. The brief which petitioner filed below, however, recited that Brooks was an employee; and no defense was interposed that the claim did not arise under Title I of the Act.

functions of such an agency. It points to various state legislation regulating and restricting garnishment against public bodies and concludes that if immunity of public bodies from garnishment is to be abrogated, it should be done by legislation so that the remedy could be appropriately molded to fit the needs of government.

In our view, however, the bridge was crossed when Congress abrogated the immunity by this "sue and be sued" clause. And no such grave interference with the federal function has been shown to lead us to imply that Congress did not intend the full consequences of what it said. Hence, considerations of convenience, cost and efficiency[12] which have been urged here are for Congress which, as we have said, has full authority to make such restrictions on the "sue and be sued" clause as seem to it appropriate or necessary.

There is some point made of the fact that suit was brought against the Federal Housing Administration rather than against the Administrator. But when the statute authorizes suits by or against the Administrator "in his official capacity" we conclude that that permits actions by or against the Federal Housing Administration. The Administrator acts for and on behalf of the Federal Housing Administration, since by express terms of the Act all of the powers of the latter "shall be exercised" by him. Hence action by him in the name of the Federal Housing Administration would be action in his official capacity.

Petitioner claims that execution should not have been allowed under the judgment. The Act permits the Administrator "to sue and be sued in any court of competent jurisdiction, State or Federal." Whether by Michigan law execution under such a judgment may be had is, like the availability of garnishment, *Federal Land Bank* v. *Priddy*, *supra*, a state question. And so far as the federal statute is concerned, execution is not barred, for it would seem to be part of the civil process embraced within the "sue and be sued" clause. That does not, of course, mean that any funds or property of the United States can be held responsible for this judgment. Claims against a corporation are normally collectible only from corporate assets. That is true here. Congress has specifically directed that all such claims against the Federal Housing Administration of the type here involved "shall be paid out of funds

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Hamm, Jones, Wage Executions for Debt, Bull. No. 622, Bureau of Lab. Statistics, U. S. Dept. of Labor.

[12] Cf. Fortas, Wage Assignments in Chicago, 42 Yale L. Journ. 526; Nugent,

made available by this Act." § 1. Hence those funds, and only those, are subject to execution. The result is that only those funds which have been paid over to the Federal Housing Administration in accordance with § 1 and which are in its possession, severed from Treasury funds and Treasury control, are subject to execution. Since no consent to reach government funds has been given, execution thereon would run counter to *Buchanan* v. *Alexander, supra*. To conclude otherwise would be to allow proceedings against the United States where it had not waived its immunity. This restriction on execution may as a practical matter deprive it of utility, since funds of petitioner appear to be deposited with the Treasurer of the United States and payments and other obligations are made through the Chief Disbursing Officer of the Treasury.[13] But that is an inherent limitation, under this statutory scheme, on the legal remedies which Congress has provided. And since respondent obtains its right to sue from Congress, it necessarily must take it subject to such restrictions as have been imposed. The fact that execution may prove futile is one of the notorious incidents of litigation, as is the fact that execution is not an indispensable adjunct of the judicial process.[14]

Affirmed.

Mr. Justice MURPHY did not participate in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[13] Fifth Annual Report, Federal Housing Administration (1938), p. 157.

[14] See Nashville, Chattanooga & St. Louis Ry. Co. v. Wallace, 288 U. S. 249, 263; Commonwealth Finance Corp. v. Landis, 261 Fed. 440, 443-444. Cf. Pauchogue Land Corp. v. Long Island State Park Commission, 243 N. Y. 15; New South Wales v. Bardolph, 52 Commonwealth L. Rep. 455.